

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,962

LEROY L. SPRIGGS,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 8 1963

Nathan J. Paulson
CLERK

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JOINT APPENDIX

[Filed in Open Court Sep. 17, 1962]

[INDICTMENT]

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Holding a Criminal Term

Grand Jury Sworn in on September 4, 1962

THE UNITED STATES OF AMERICA	:	Criminal No. 767-62
v.	:	Grand Jury No. 937-62
LEROY L. SPRIGGS	:	Violation: 22 D.C.C. 502 (Assault With a Dangerous Weapon)

The Grand Jury charges:

On or about July 22, 1962, within the District of Columbia, Leroy L. Spriggs made an assault on Richard T. Shaw with a dangerous weapon, that is, a shotgun.

/s/ David C. Acheson
Attorney of the United States in
and for the District of Columbia

A TRUE BILL:

/s/ Edward M. Parker
Foreman

[Filed Sep. 21, 1962]

PLEA OF DEFENDANT

On this 21st day of September, 1962, the defendant, Leroy L. Spriggs, appearing in proper person and by his attorney, J. Y. E. Allen, Esquire, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

By direction of

MATTHEW F. McGUIRE
Presiding Judge
Criminal Court # ASSIGNMENT

Present:

HARRY M. HULL, Clerk

United States Attorney

By Alfred L. Hantman
Assistant United States
Attorney

By /s/ Daniel J. Mencoboni
Deputy Clerk

J. Rawls
Official Reporter

[Filed July 26, 1963]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1

Washington, D. C.
April 30, 1963

The above-entitled cause came on for trial before the HONORABLE JOSEPH C. McGARRAGHY, United States District Judge, and a Jury, at 1:45 p.m.

* * * * *

9

THE COURT: You may call your first witness.

MISS LINDEMANN: Mr. Shaw.

Whereupon --

RICHARD T. SHAW

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

10

DIRECT EXAMINATION

BY MISS LINDEMANN:

Q. Will you tell His Honor and the ladies and gentlemen of the jury your name, sir? A. My name is Richard T. Shaw.

Q. Mr. Shaw, if you would, sir, speak right out to me, so that His Honor and the ladies and gentlemen will all be able to hear what you have to say.

Would you tell us where you are employed, Mr. Shaw? A. I am employed out at Peace Crossing, in Bladensburg, Maryland.

Q. How long have you been thus employed? A. Employed --

Q. I can't hear you, sir. A. I have been employed there for about four years.

Q. For four years.

Now, Mr. Shaw, if you would turn your recollection back to the night of July 22, 1962.

MISS LINDEMANN: If Your Honor please, I believe that was a Sunday.

BY MISS LINDEMANN:

Q. Can you tell us approximately, oh, seven, eight o'clock in the evening, where you were, sir? A. Well, I was at the -- they call it the Hall, at Fairmont Heights, Maryland.

11 Q. And in whose company were you? A. Well, I was with a fellow by the name of Hiawatha Thorne.

Q. Mr. Thorne? A. Yes.

MR. SCHLICK: What is the name?

BY MISS LINDEMANN:

Q. Would you repeat that name a little louder, if you would, sir?

A. Hiawatha Thorne.

THE COURT: What is the first name?

THE WITNESS: Hiawatha Thorne.

MISS LINDEMANN: If Your Honor please, that is H-i-a-w-a-t-h-a;
last name, T-h-o-r-n-e.

BY MISS LINDEMANN:

Q. Is that correct, Mr. Shaw? A. (Witness nods assent.)

THE COURT: Very well.

BY MISS LINDEMANN:

Q. Now, sir, at the time that you entered this beer hall or restaurant,
will you tell us what took place? Just describe it in your own words, if you
will. A. I walked in the restaurant and this Speaks was standing inside
12 as I walked in.

THE COURT: Who?

THE WITNESS: Speaks.

THE COURT: Speaks?

THE WITNESS: That is as near as I can call his name.

BY MISS LINDEMANN:

Q. Excuse me, sir? A. I said, that is as near as I can call his name.

Q. Mr. Speaks, yes, sir. A. And me and Speaks had had a fight
about two months before that; and when I walked in the restaurant, he say
that he was going -- every time he see me, he was going to jump on me
and beat me up. So I grabbed a bottle and threw it at him. So he went out-
side the restaurant; and I went outside the restaurant. When I came out-
side, he was coming on me with a long pipe.

Q. Can you describe to us, sir, if you would, what that pipe looked
like? About how long was it? A. About four foot.

Q. And can you tell us what it was made out of? A. Well, it was --
a pipe, a cast iron pipe.

Q. All right. Can you tell us the -- A. I mean, not a cast iron.
Something like a gas pipe.

Q. Can you tell us the position that Mr. Speaks was holding the
13 pipe at the moment that he came at you? A. He came at me with
the pipe like this (indicating).

Q. Now, did you notice anybody in his company at that time?
A. Well, Buddy Washington was coming across the street at the time.

Q. Buddy Washington was across the street at the time? A. Yes.

Q. Now what if anything did you then do? A. I reached down and picked up a bottle and I broke it; and when he charged at me with the pipe, I charged at him with the bottle.

Q. All right. A. And at that time, Buddy Washington, he grabs a sign, and he comes on with with the sign. He hits me on this arm and broke this arm (indicating).

Q. Can you tell us what kind of a sign it was, sir? A. It was a sign that had No Parking on it.

Q. No Parking. A street No Parking sign, is that what you are talking about? A. Yes, ma'am.

Q. A metal one? A. Yes, ma'am.

14 Q. What happened then? A. They knocked me down then. Then all of them jumped on me, started beating me -- Leroy, Speaks --

Q. Leroy is who? You haven't mentioned him to us yet. A. They all jumped on me then.

Q. Who is Leroy, sir? A. There he is right there.

Q. Would you tell us what he is wearing? A. What he is wearing now?

Q. Yes. A. He is wearing a kind of greenish shirt, dark greenish shirt.

MISS LINDEMANN: If Your Honor please, may the record indicate that the witness has identified the Defendant Leroy Spriggs?

THE COURT: Very well.

BY MISS LINDEMANN:

Q. Now, sir, will you continue and tell us what happened?

A. And they jumped on me then, and they started beating me, kicking me, and doing everything to me.

Q. Who is "they"? A. Leroy, Speaks and Buddy Washington.

Q. All right, sir. What happened then? A. And some girl -- I don't know -- some girl got them off of me. And so me and Hiawatha

15 Thorne, we walked on down Eastern Avenue about a block and a half; and the next time I looked around, Hiawatha told me, said: They's behind you with a shotgun.

Q. I can't hear you, sir. What did he say? A. Thorne say they was behind me with a shotgun.

Q. Yes. A. It was Leroy Spriggs, Buddy Washington and Speaks. Leroy was standing in the middle between the two -- between Speaks and Buddy Washington, with his shotgun.

I looked over my shoulder like this (indicating), and I saw him. And Thorne say: Look like they fixing to shoot you.

So I said: Well, maybe they won't shoot me. Just like that. I was standing there looking at them, just like that, right across my shoulder; and the gun went off; and I fell right on the curb, right across the curb.

So different peoples came up and asked me did I know who it was; and I told them, Leroy Spriggs; and everybody asked me, I told them that; and when I got to the hospital, they asked me the same thing; and I told them.

That is what it was.

MISS LINDEMANN: Excuse me for a moment.

16 If Your Honor please, it has been stipulated between counsel for the defense and the Government that this is the hospital record from the Prince Georges Hospital. It is a photostatic copy, if Your Honor please.

At this time, I offer it in evidence as Government's Exhibit 1.

THE COURT: Do you have any objection, Mr. Schlick?

MR. SCHLICK: I have no objection.

THE COURT: Very well, it will be received.

THE CLERK: Government Exhibit No. 1 marked for identification and received.

(Whereupon the record of Prince Georges Hospital was marked Government's Exhibit No. 1, and received in evidence.)

MISS LINDEMANN: Thank you, Your Honor.

BY MISS LINDEMANN:

Q. Can you tell us, sir, what your condition was at the time that you arrived in the hospital? A. I was in poor condition. I was almost dead, to tell you the truth. I was paralyzed for a week or more, my whole

left side. I had been shot through my kidneys. I passed the shot through my urine. That is how bad it was.

Q. Did there come a time after approximately three or four weeks when you were released from the hospital? A. Yes, ma'am, I was released from one hospital and went to another one. They released me from

17 Prince Georges Hospital to Mt. Alto Hospital in D. C.

MISS LINDEMANN: If Your Honor please, the record of the hospital indicates that the witness was on the critical list of the hospital for over a week, and that his left side was paralyzed for a period thereafter.

THE COURT: Very well.

BY MISS LINDEMANN:

Q. Sir, I want to ask you this question: Have you ever been drunk?

A. Yes, ma'am.

Q. Have you ever been arrested and forfeited money for being drunk? A. Yes.

Q. Had you had anything to drink on July 22? A. Yes, ma'am.

Q. How much had you had to drink? A. Well, it wasn't a half pint.

Q. Less than a half pint? A. Less than a half pint.

Q. Were you drunk that day? A. No, ma'am.

Q. Are you sure? A. I am sure.

18 Q. Could you see? A. Sure.

Q. Could you see clearly? A. Yes, ma'am.

Q. Was it daylight? A. Yes, ma'am.

Q. Was it Daylight Savings time then, if you know? A. It was, yes, ma'am.

Q. When you looked over your shoulder, are you perfectly clear in your mind who you saw? A. Yes.

Q. And who was that? A. Leroy Spriggs.

Q. Is that the Defendant in this case? A. That is him.

Q. And is he the man who pointed and fired the gun at you?

A. Yes, ma'am.

MISS LINDEMANN: I have no further questions, Your Honor.

THE COURT: Very well. Mr. Schlick.

CROSS EXAMINATION

BY MR. SCHLICK:

19 Q. Mr. Shaw, let's go back to the beginning of this thing. You are familiar with Hall's Beer Garden, aren't you? A. Yes.

Q. You go there quite a bit? A. Yes.

Q. You were there all afternoon on July 22, that Sunday afternoon, weren't you, pretty much all afternoon; weren't you? A. No, sir, not there.

Q. Did you go to the beer garden across the street then? A. Yes, sir.

Q. You were over there, too, weren't you? A. Yes, sir.

Q. All Sunday afternoon, weren't you? A. I was in different places.

Q. Yes, but you were drinking all Sunday afternoon, weren't you? A. No, sir.

Q. When this Mr. Speaks that you referred to came into the beer garden that you were drinking at, you deliberately threw a bottle at him before he even said a word to you, didn't you?

MISS LINDEMANN: I object, Your Honor.

THE COURT: The objection is overruled. He may answer.

20 You may answer.

THE WITNESS: No, sir, Speaks didn't come into the beer garden. I went in the beer garden.

BY MR. SCHLICK:

Q. Weren't Mr. Speaks and Mr. Spriggs and a group of other men playing crap in the lot across the street? A. Not that I know of.

Q. Now, after you threw the bottle, you came outdoors with Mr. Speaks? A. No, sir.

Q. You came out after Mr. Speaks? A. Yes, sir.

Q. And he left you and you pursued him, then, isn't that right? A. I didn't pursue him, no, sir.

Q. You broke a bottle in two and cut him up with it, didn't you?

A. After he came at me with the pipe.

Q. You had a knife in your hand, too, didn't you? A. No, sir.

Q. Didn't you cut Mr. Spriggs that same day? A. No.

Q. You cut him two or three other times, though, haven't you?

A. No.

21 Q. You are pretty handy with that knife, aren't you? A. Didn't have a knife.

Q. After you cut up Mr. Speaks, he was laying in the road there, was he not? A. No, sir. I was the one laying in the road.

Q. You mentioned that you -- as you were going down Eastern Avenue that you were followed by three men, is that right? A. That is right.

Q. Who were those three men? A. Leroy Spriggs, Speaks and Buddy Washington.

Q. You are absolutely sure that Mr. Speaks was there, are you, sir? A. I am sure.

Q. Didn't Mr. Speaks get cut up by you in front of Hall's Beer Garden and get put in the ambulance before you got in the ambulance? A. No, sir.

Q. Did you not ride to the hospital with Mr. Speaks? A. We both rode together.

Q. Where did they pick him up then? A. I don't know where they picked him up.

22 Q. You cut him up in front of Hall's, did you not? A. Yes.

Q. Who introduced the gun? Do you have any idea who introduced the gun in this battle? A. When I seed the gun, Leroy Spriggs had it.

Q. Where did the gun come from? Leroy never had a gun. A. Where it came from, I don't know.

THE COURT: Don't put your questions so close together. We can't follow them. You have a couple of questions there right together.

BY MR. SCHLICK:

Q. When this fight started, there was no gun involved, was there?

A. No, no gun involved.

MR. SCHLICK: I think I would like to make a little diagram here to show the jury exactly the set-up of this place out there, and how it operates.

MISS LINDEMANN: Is this a question, Your Honor, counsel is asking?

THE COURT: Can you two get together on a diagram of the area where this occurred? Can you agree?

MISS LINDEMANN: Counsel has never even mentioned to me the idea of a diagram, Your Honor. However, if he has visited the area -- I have not -- I certainly would be happy to take counsel's word for what it looks like.

23 THE COURT: Very well, let him proceed.

MR. SCHLICK: This is Eastern Avenue (indicating).

THE COURT: Can you see that all right from where you are sitting?

THE WITNESS: Yes, sir.

MR. SCHLICK: That is Eastern Avenue. And the District Line runs just the other side of Eastern Avenue. And Hall's Beer Garden is about a half block inside.

THE COURT: Are you asking a question? You are not testifying, you understand.

MR. SCHLICK: I just wanted to explain the diagram.

THE COURT: I understand, but let him do it.

BY MR. SCHLICK:

Q. Mr. Shaw, are you familiar with the area of Eastern Avenue?

A. Sure.

Q. Is Hall's Beer Garden located about that spot on 61st Street (indicating)? A. That is right.

Q. Isn't there a beer garden across on this side, too? A. That is right.

Q. Who is the owner of this beer garden, do you know?

24 MISS LINDEMANN: I object, Your Honor. I think this is beyond the scope of the direct examination.

THE COURT: I know, but this is cross-examination.

Do you know who operates the beer garden across the street?

THE WITNESS: The lady that had been owning it, she died. So I guess left it to her daughter, a girl by the name of --

BY MR. SCHLICK:

Q. Is that daughter related to Mrs. Cooper? A. That is right.

Q. There is also a vacant lot in here, isn't there (indicating)?

A. A what?

Q. A vacant lot next to that beer garden? A. That is right.

Q. Is that where you people play crap from time to time? A. I don't know about we people or you people; I don't play no crap.

Q. You and your friends play crap there once in a while?

MISS LINDEMANN: I object, Your Honor. The witness has already testified he does not play crap. He doesn't shoot crap, if that is the expression generally used.

25 BY MR. SCHLICK:

Q. After you came out of the beer garden and cut up Mr. Speaks --

MISS LINDEMANN: I object.

THE COURT: Mr. Schlick, he didn't so testify. I think you are characterizing it beyond the scope of his testimony.

MR. SCHLICK: Your Honor --

THE COURT: I think your characterization is not supported by his testimony, so don't say that any more.

MR. SCHLICK: All right.

BY MR. SCHLICK:

Q. Mr. Shaw, when you broke the bottle and went after Mr. Speaks outside of the beer garden --

MISS LINDEMANN: I object, Your Honor.

THE COURT: He says he went after him.

MISS LINDEMANN: I believe he said that he defended himself against Speaks' iron pipe.

THE COURT: All right.

BY MR. SCHLICK:

Q. Then what was your route, Mr. Shaw? Did you come down to Eastern Avenue or did you go through the alley? A. Come down to Eastern Avenue.

Q. Right here at the corner (indicating)? A. That is right.

26 Q. Is that when the police came? A. Didn't no police come.

Q. You didn't see any police at that time. Then was your route down this way (indicating)? A. Yes.

Q. Who was with you at the time you came down Eastern Avenue? A. Thornton.

Q. Thorne? A. Thornton.

Q. Was Herman Burr with you? A. They say he was with me; I didn't see him.

Q. You didn't see him? A. I didn't see him.

Q. How about Hal Waters? A. That is Thorne.

Q. He is also known as Hal Waters? A. That is his name, Hiawatha Thorne.

THE COURT: He is the same man.

MR. SCHLICK: I see.

BY MR. SCHLICK:

Q. Were there two men with you at the time? A. No.

27 Q. Supporting you? A. Wasn't but one man.

Q. You had a broken arm, didn't you? A. If it was broken, I didn't know it was broken.

Q. But it turned out to be broken, didn't it? A. It turned out to be broken.

Q. Who broke that arm for you? A. The doctor said the shot broke my arm; I was shot in the arm.

Q. How about Buddy Washington, didn't he hit you with the sign? A. Well, the other guy hit me, too; he didn't break my arm.

Q. He didn't break your arm.

Now, as you came down Eastern Avenue, you say you were shot

right there on the corner? A. I was shot almost to the lady's house; it wasn't on the corner.

Q. Wasn't on the corner. There is a house in there, you say. Do you know who owns that house? A. Miss Hall owns the house.

Q. Miss Who? A. Miss Hall.

Q. In this house here (indicating)?

28 THE COURT: Where is the house located?

THE WITNESS: House is located on Eastern Avenue.

BY MR. SCHLICK:

Q. There are several streets there. What street is it near?

A. It is located past 60th.

Q. Past 60th? A. I am talking about the number right there in the middle.

Q. Right here (indicating)? A. No.

Q. Sixtieth Place? A. Past that.

Q. And you say you were shot here (indicating). Is there a house there? A. No, I wasn't shot there; I was shot down the street a little further. I was shot --

Q. Who lives there, do you know? A. If that is the house, that is where the Halls live. I was shot closer to the lady's house.

Q. Now, you are absolutely sure that Mr. Speaks was in the road following you, is that right? A. Them three men was together, Speaks, Buddy Washington and Leroy. I am sure of that.

29 Q. You are absolutely sure of that? A. I am absolutely sure.

MR. SCHLICK: I have no other questions.

THE COURT: Have you any redirect?

MISS LINDEMANN: I have no redirect, Your Honor.

THE COURT: Very well, he may step down.

(Witness excused.)

MISS LINDEMANN: Mrs. Cooper.

Whereupon --

CALPERNIA H. COOPER

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MISS LINDEMANN:

Q. Would you tell us your name, please? A. My name is Calpernia H. Cooper.

Q. Mrs. Cooper, if you speak right out to me, so His Honor and the ladies and gentlemen will all be able to hear you.

Where do you live? A. 601 60th Avenue, Fairmont Heights, Maryland.

Q. Can you tell us where you were approximately at eight o'clock on July 22 of 1962? A. Well, I was sitting in my dining room, using the telephone on that date.

30 THE COURT: Mrs. Cooper, you are going to have to keep your voice up a little bit.

THE WITNESS: Shall I look down?

THE COURT: Do your best. Let's see what you can do.

THE WITNESS: O.K. On the date that was just specified, I was sitting in my dining room using the telephone, dialing someone, and as I was waiting for them to answer, I happened to look up out of the window, and I saw a fellow by the name of Leroy Spriggs had a shotgun aiming it at some one. And I said to myself: I wonder who he shooting at.

So I left my chair and went to another room; and just as I raised up to go to the other room, I heard the gun go off; and as I went to the next room, I saw a fellow lying down on the ground. And immediately I ran to the telephone to dial the operator to please send someone, someone had gotten shot.

That is all I remember of the case.

BY MISS LINDEMANN:

Q. Let me ask you this, Mrs. Cooper. Can you tell us, was it light or dark or in between? How well could you see? A. Beg pardon?

Q. How well could you see? How light was it out? A. Well, it

31 was really light. I'd say about just beginning to get dusk, I suppose you might say.

Q. Thank you. Would you tell us, if you know, was it Daylight Savings Time then? A. Well, I think, yes, it was Daylight Saving Time.

Q. Now, let me ask you this: Had you ever seen the Defendant before you looked at him out of your window that night? A. Yes, I had.

Q. When did you see him? A. Well, I saw him about maybe a month ago or three weeks ago, I don't know just exactly the date, that I was up sweeping my father's front off and he was sitting on the lawn asleep. And as I was beginning to sweep, another fellow came across the street to wake him up so that I could sweep. I said: Don't bother him; he will get up. Just then he got up and he went across the street; and when he went across the street to sit down, he looked directly at me and I looked directly at him.

That is how I know he was the one that had the shotgun the night of July.

Q. When you looked up out of your window, can you tell us what portion of his face you were able to see? A. Well, I would say three-fourths of his profile, of his face.

32 Q. Tell me again. A. I would say about three-fourths diagonally.

Q. About three-fourths of his face? A. Yes.

Q. Now, could you see the position in which he was holding the shotgun? A. Yes, I could.

MISS LINDEMANN: If Your Honor please, I would like to have this marked as Government's Exhibit 2, for identification.

THE COURT: Mr. Marshal, will you take a look at it first. I am always leery of shotguns.

MISS LINDEMANN: Shall I continue in the meantime?

THE COURT: Just a second. He will only be a second.

You want that marked as Government's 2, is it?

MISS LINDEMANN: Government's Exhibit 2, for identification, if Your Honor please.

THE CLERK: Government's Exhibit No. 2, marked for identification.

(Whereupon the shotgun was marked Government's Exhibit No. 2, for identification.)

33 THE DEFENDANT: I never saw the gun in my life.

MR. SCHLICK: You can put it in, Your Honor. I don't know whether it is the gun or not. I have no objection.

THE COURT: Proceed.

MISS LINDEMANN: Then I offer it in evidence, Your Honor, if counsel has no objection.

THE COURT: Very well, it will be received.

MISS LINDEMANN: Thank you.

(Whereupon Government's Exhibit No. 2 was received in evidence.)

BY MISS LINDEMANN:

Q. Now, Mrs. Cooper -- A. Yes.

Q. -- I ask you whether when you looked out of your window and you saw the Defendant holding the gun, if this looks to you, Government's Exhibit 2, like the gun you saw the Defendant holding? A. Yes.

Q. Excuse me, ma'am? A. Will you repeat that again?

Q. Does this look to you like the gun that you saw the Defendant holding when you looked out of the window? A. Well, I can't say exactly that is the gun.

34 Q. Does it look to you like the gun, madam? A. Yes, it does look to me like it.

Q. All right. Will you tell us the position in which the Defendant was holding this gun at the time you looked out of the window? Show us with your hands the position. A. Yes, I will be glad to. When I was looking out of my window at him, he had the gun, was aiming in that -- in this sort of position (indicating).

Q. All right. Which way down the street was he aiming?

A. Well, I would say he was aiming at the north way of the street, because his face was toward where I could see him and he was like pointing north.

Q. When you went to your other window, Mrs. Cooper -- A. Yes.

Q. -- and saw the person lying on the ground, can you tell us if that person -- if you know -- if that body was lying in the place that the Defendant was pointing the gun at? A. Well, I would say, yes, for the simple reason, when I saw him pointing the gun at the position that he had the shotgun aimed, and when I went to my window to look and saw the fellow lying on the ground, I would say that was the direction that he was pointing at.

Q. Can you tell us if that body was lying in the District of Columbia? A. Yes.

35 Q. Had you ever met the victim, Mr. Shaw, before that day?

A. I beg your pardon?

Q. Had you ever met Mr. Shaw before that day? A. No, I had not.

MISS LINDEMANN: I have no further questions, Your Honor.

THE COURT: Mr. Schlick.

CROSS EXAMINATION

BY MR. SCHLICK:

Q. Mrs. Cooper -- A. Yes.

Q. -- your house, I believe, is located at the corner of 60th and Eastern Avenue, is that right? A. That is right; that is correct.

Q. And, ma'am, you say the man who was holding the gun was aiming from toward this direction, is that right? A. Now, I am a little confused of just the direction as that diagram shows.

Q. This is your house on the corner of 60th and Eastern Avenue?

A. Yes. Now, on your left now, would that be toward 60th Avenue?

36 Q. This would be 60th Avenue; this would be 60th Place; and 61st Place, Hall's Beer Garden (indicating). A. Oh, I see. Now, what is your question?

Q. Is it true that the man that was holding the gun, you say you saw holding a gun was shooting in this direction? Is that right?

A. Yes, that is right; that is correct.

Q. Now, you say you saw clearly -- saw his face. How far away was he from you when you say you saw this man's face? A. I am not no good one at measuring for distance. I would say about twenty-five or thirty feet; maybe it would be more.

Q. Twenty-five or thirty feet. Was the man right-handed or left-handed, do you know? A. Right-handed or left-handed?

Q. Yes, when he was holding the gun. A. I --

Q. Do you recall? A. I couldn't say just now. Now, he was standing to me like my chair was here, like you would be standing where you are now, and he would be aiming the gun like toward me. I don't know whether you would call that right-handed or left-handed.

37 Q. Well, if I held the gun -- you know the normal position of holding a gun. A. I really couldn't say I know it.

Q. Was the man --

MISS LINDEMANN: May the witness answer the question?

THE COURT: Proceed, Mr. Schlick. Go to your next question.

BY MR. SCHLICK:

Q. Was the man holding the gun in this fashion (indicating)?

A. That is right, because he were looking directly at me and I could see him from the way I was sitting in my dining room window.

Q. You couldn't see his full face if he was holding -- A. I didn't specify I saw his whole face. I said I saw three-quarters of his face.

Q. You could have been mistaken; it could have been somebody else, couldn't it? A. No, it could not, because I recognized him.

Q. Now, you say you left the telephone at the corner of your window and went to another window, is that right? A. Yes. I said that I left my telephone to see who he was aiming at, so see what he was shooting at. I wouldn't say who he was shooting at, to see what he was shooting at. To my estimation, I thought he was shooting at the birds.

38 Q. Maybe he was shooting at the birds? A. Sure, but when I went to see and saw the fellow lying on the ground, I knew different.

Q. You didn't see him shoot the gun, did you? A. No, I didn't see him shoot the gun, but the minute I got up from my chair, I heard --

THE COURT: Let her finish before you ask the next question.

BY MR. SCHLICK:

Q. Didn't you faint after that? A. I didn't faint after that. When I went to the telephone to dial the operator, I said: Operator, will you please call the police, ambulance or someone; someone has got shot or hurt; please send someone.

That is all I remember after that.

Q. You heard the noise is all? You just heard a noise. Are you sure that it was a shot that you heard? A. Yes, I heard the shot.

Q. You heard a noise, is that right? A. Yes, I heard a noise.

Q. But you didn't see anybody shoot the gun? A. No.

Q. All right.

MR. SCHLICK: That is all, Your Honor.

39 THE COURT: Do you have anything further?

MISS LINDEMANN: No further questions, Your Honor.

THE COURT: She may step down.

* * * * *

40 MISS LINDEMANN: Could the witness, Mrs. Cooper, be finally excused?

THE COURT: Do you have any objection?

MR. SCHLICK: I have no objection.

* * * * *

41 Washington, D. C.
May 1, 1963

* * * * *

42 JOSEPH HALL

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MISS LINDEMANN:

43 Q. Will you tell us, sir, your name and your duty assignment?

A. My name is Joseph Hall; I am a police officer, Fairmont Heights, Prince Georges County, Maryland.

Q. Will you tell us, sir, if you were so assigned on the 22nd of July, 1962? A. I was.

Q. Will you tell us where you were at some time between seven and eight o'clock, p.m. of that day? A. I was in my station and I had monitored a call. As a result of this call, I went to the 600 block of Eastern Avenue; and there on Eastern Avenue, I found on the area of the street dedicated to the sidewalk a man laying face downward. I looked at him --

Q. Captain, could you speak just a little louder, if you would, sir? A. I found a man lying face downward on the sidewalk. I looked at him and I recognized him. And at this moment, the ambulance crew, which had arrived on the scene about the same time as I, was prepared to remove him. I stepped aside and let them take him.

He was placed in the ambulance. I got in the ambulance with him, and I called his name, Richard Shaw, and I asked him if he knew me, and I asked him some other information.

* * * * *

50 MR. SCHLICK: Your Honor, may I approach the bench?

THE COURT: Very well.

(Whereupon counsel approached the bench and the following proceedings were held:)

MR. SCHLICK: At the beginning of this trial, I said I was going to object to certain testimony they were going to try to bring out with this witness. I thought we were going to have some hearing on the issue without the jury.

51 THE COURT: Are you going to have any preliminary questions before you get to the question of his admission?

MISS LINDEMANN: Yes, Your Honor.

THE COURT: You are. When you reach the point of his admission, let me know and I will excuse the jury.

MISS LINDEMANN: I certainly will, Your Honor, of course.

* * * * *

LOWELL E. BAILEY

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MISS LINDEMANN:

Q. Will you tell us your name and your duty assignment?

A. Private Lowell E. Bailey, Metropolitan Police, assigned to the 14th Precinct.

THE COURT: Your last name is what, Bailey?

THE WITNESS: Bailey, B-a-i-l-e-y.

BY MISS LINDEMANN:

Q. Officer Bailey, were you so assigned on July 22 of 1962?

A. That I was.

52 Q. Now, sir, I would like you to speak right out to me so His Honor and ladies and gentlemen can hear you.

Will you be very careful in answering my questions not to tell us any conversation that you had. All right? A. All right.

Q. Now, sir, will you tell us where you were at approximately sometime between seven and eight o'clock on July 22 of 1962? A. I responded to a radio run for a shooting call in the 600 block of Eastern Avenue, Northeast.

Q. Now, when you arrived at that scene, will you tell us what if anything you observed? A. I observed a large crowd and an ambulance with three people in the back of the ambulance just leaving the scene of the 600 block of Eastern Avenue, and a man identified himself to me as Captain Hall of the Fairmont Heights Police Department in Maryland.

Q. Without telling us what was said, did you then have a conversation with Captain Hall and did he relate certain information to you?

A. Yes, he did.

Q. Now, thereafter, as a result of that conversation, what if anything did you do? A. We arrested a subject and charged him with assault with a deadly weapon.

53 Q. Can you tell us what the name of that subject was? A. Leroy Spriggs.

Q. Can you tell us if you see the Defendant Spriggs present in the courtroom today? A. Yes, ma'am, I do.

Q. Would you point him out to His Honor and ladies and gentlemen of the jury? A. (Indicating).

MISS LINDEMANN: May the record indicate, Your Honor, that the witness has identified the Defendant Spriggs?

THE COURT: Yes.

BY MISS LINDEMANN:

Q. Now, sir, after the arrest of Spriggs, will you tell us physically what happened to the Defendant, if you know, or to the extent that you know? A. He was arrested and placed in the patrol wagon and transported to the 14th Precinct.

Q. To the extent that you know, personally, sir, will you tell us? A. I saw him placed in the patrol wagon and leave the scene of the shooting in the 600 block of Eastern Avenue.

Q. Now what if anything did you then do? A. I inquired of several people on the scene if there had been any other witnesses to this shooting that had taken place.

54 Q. Now, as a result of that inquiry, what if anything did you do? A. I learned that a Mrs. --

Q. No, no, without telling us what was said or what you found out, what did you do then? A. I conducted an investigation on the scene there to ascertain whether or not the shooting had taken place in Maryland or in the District; and as a result of my investigation, it was determined that the shooting had taken place in the District of Columbia.

Q. Did you go to see anybody? A. Yes, I did.

Q. Who was that? A. I talked with a lady, Mrs. Calpernia Cooper, that lives at 601 60th Avenue in Fairmont Heights, Maryland.

Q. Now, did you have an opportunity to observe the scene of the street and the relationship of Mrs. Cooper's house to that street?

A. Yes, I did.

Q. Would you be kind enough --

MISS LINDEMANN: With the Court's permission.

55

BY MISS LINDEMANN:

Q. -- to go to the board. You see a diagram there on the board, sir? A. (Witness nods assent.)

Q. Officer, would you get up and draw for us, not the intersection but just the relationship of Mrs. Cooper's house to Eastern Avenue?

(Whereupon the witness left the witness stand and approached the board.)

A. Should I draw a new diagram?

Q. If you draw right underneath the one that is there, sir. Just draw Eastern Avenue, if you would, and Mrs. Cooper's house in relationship to it. A. (Drawing on board.) 601 60th Avenue is Mrs. Cooper's residence.

Q. Now, what is the street? A. This is Eastern Avenue (indicating), east curb of Eastern Avenue, the corner of 60th Avenue and Eastern Avenue.

Q. All right, sir, would you take the stand again?

(Whereupon the witness resumed the witness stand.)

MISS LINDEMANN: Now, let me move this a little closer. It is rather small.

THE COURT: Mr. Marshal, will you help her.

MISS LINDEMANN: Can the jury see this, Your Honor?

56

THE COURT: Can you see that all right?

(The jury indicated in the affirmative.)

THE COURT: Very well.

BY MISS LINDEMANN:

Q. I notice that Mrs. Cooper's house here (indicating), you have drawn the house at an angle and with an insert here. Is that correct, officer? A. That is correct.

Q. Now, did Mrs. Cooper have occasion to point out two windows to you? A. Yes, she did.

Q. Can you tell us if one of the windows was here and the second window was here (indicating)? A. That is correct.

Q. Now, did you have occasion to look out of this window (indicating)? A. Yes, ma'am, I did.

Q. Did you have occasion to look out of this window (indicating)? A. Yes, ma'am, I did.

Q. From this window, officer, were you able to see any further than this section of Eastern Avenue? A. That is about the section that can be seen from that window.

57 Q. Can you tell us if there is a telephone near this window?

A. There is a phone pole right outside that window, just inside the curb line, approximately where your line crosses the curb line.

Q. Now, sir, can you tell us how many steps it would be from this window here inside of the angle of the house to this window here?

A. Two, possibly three steps.

Q. Can you tell us whether this window here would then have a full view of Eastern Avenue? A. Yes, it would.

Q. Is this (indicating) approximately the place where the victim was lying? A. He was lying on the -- inside the curb line between the curb and the fence around Mrs. Cooper's house, approximately in that area.

Q. And would this position have been visible from the second window? A. Yes, it would.

Q. Would it have been visible from the telephone window? A. No, it wouldn't have.

Q. Approximately how long, if you can tell us, sir, would it take a person to step from the telephone window at the inset of the house to the
58 window with the full view of Eastern Avenue? A. Surely within two seconds.

Q. After you left the scene, where did you go, sir? A. After I left the scene of the shooting, I went immediately to the 14th Precinct.

Q. At that time, did you have occasion -- without telling us what was said -- to have a conversation with the Defendant? A. Yes, I did.

Q. Now, can you tell us approximately how much time had elapsed from the time that you saw him depart in the wagon until the time that you returned to the Precinct yourself and had this conversation, to the best of your recollection? A. Approximately fifteen minutes from the time I saw him leave until the time I arrived at the Precinct myself, fifteen, maybe twenty minutes.

Q. How much intervening time was there between the time that you arrived at the Precinct and the time that you had the conversation with Spriggs? A. Almost immediately.

MISS LINDEMANN: If Your Honor please --

THE COURT: I will excuse the jury, Mr. Marshal.

(Whereupon the jury withdrew from the courtroom and the following proceedings were held.)

BY MISS LINDEMANN:

Q. Officer, prior to this conversation, can you tell us if you advised the Defendant of his rights? A. Yes, I did.

Q. Can you tell us if you know whether he was previously advised of his rights by other officers? A. I understand that he was.

THE COURT: When you say you advised him of his rights, what did you tell him?

THE WITNESS: I informed him that it was not necessary for him to make a statement to me, that if he did make a statement to me, anything that he stated could be used against him in a court of law.

BY MISS LINDEMANN:

Q. Now, sir, can you tell us how it happened that you were in conversation with the Defendant? A. We have the arrest forms that are necessary to be filled out at the Precinct, and it is necessary to ascertain information to go on these forms, if possible.

Q. During the course of filling out that form, will you tell us, to the best of your recollection, exactly what you said to the Defendant and what he said to you? A. During the course of our conversation, in getting information on his name, address, as much of his background and work history as I could obtain, I asked the Defendant that if he wanted

to tell me what had happened up on Eastern Avenue, something I could find out.

And he stated: I am not going to tell you anything.

And I went ahead working on the papers that I was filling out. Oh, I guess I had filled out a couple of lines on the statements there when I asked him again if he wanted to tell me what happened; and he stated that he didn't want to tell me anything.

And to the best of my recollection, the exact language that I used to the Defendant is: The hell with it. If you don't tell me anything -- if you don't want to tell me anything, you don't have to. The man you shot knows who shot him, the man that was with him knows who shot him, and I have a completely disinterested witness who also knows who shot him, and she is the one who told me your name, and she told me that your nickname is Gummy. And if you don't want to tell me anything, you don't have to tell me anything. I don't need to know it.

Well, he says, all right, well, I shot the man.

THE COURT: He said what?

THE WITNESS: Well, he says, all right, I shot the man.

61 BY MISS LINDEMANN:

Q. Now, thereafter, officer, did you have a further conversation with him? A. There was more conversation filling out this form and he stated that there had been a fight in Maryland, and that Shaw was on his way away from the scene of the fight, and that Shaw was being assisted by a man named Hiawatha Thorne, and someone got a shotgun and handed it to Spriggs and Spriggs shot Shaw with the shotgun.

Q. Did he say anything about his reasons? A. He said that he just shot him. As best I can recall, he just -- I just shot him -- that was his statement as I recall -- I just shot him.

MISS LINDEMANN: That is the extent of the testimony, Your Honor.

THE COURT: Do you want to examine him, Mr. Schlick?

MR. SCHLICK: On that one issue at this point, Your Honor.

THE COURT: Yes.

CROSS EXAMINATION

BY MR. SCHLICK:

Q. You say you went back to the Precinct after you examined the house of Mrs. Cooper or Miss Cooper? A. Yes, sir. There was some discrepancy as to where this had happened and as I stated we were
62 trying to ascertain whether or not the shooting actually took place in Maryland or D. C.

THE COURT: On that point, officer, where is the District Line?

THE WITNESS: May I refer to that?

THE COURT: Yes.

(Whereupon the witness left the witness stand and approached the board.)

THE WITNESS: The front corner of Miss Cooper's fence, it runs at a slight angle to the curb, and the front corner of her fence is inside the District Line, and the back corner of her fence is in Maryland.

THE COURT: Where is the Maryland and the District Line? Where is the line?

THE WITNESS: This would be Maryland and this would be D. C. (indicating); and as best we can determine, this is about the District Line (indicating).

THE COURT: I see. The house of Mrs. Cooper is in Maryland, is it?

THE WITNESS: That is correct, sir.

THE COURT: But the front of the house is in the District?

THE WITNESS: The front corner of the fence is in the District.

63 THE COURT: And that curb line there is in the District of Columbia?

THE WITNESS: This is all in the District of Columbia, that is correct.

THE COURT: Thank you very much. You may resume the stand.

(Whereupon the witness resumed the witness stand.)

BY MR. SCHLICK:

Q. You were working in conjunction with another detective on this investigation, weren't you? A. Yes, sir.

Q. What was his name? A. Alton M. Bell, detective assigned to the 14th Precinct.

Q. Isn't he actually the one that made out the report and did the questioning, asked questions of the Defendant? A. He is the one that went to the hospital and talked with the victim. He also talked with the Defendant Spriggs.

Q. Wasn't it actually closer to two-thirty or three o'clock in the morning when you started questioning this man? A. No, sir. As I recollect, I was working four p.m. to twelve midnight that day, and I went home at midnight as I recall.

64 Q. And as a result of your questioning, you say he made an admission to the fact that he did the shooting? A. Yes, he did.

Q. This was before arraignment the following morning, wasn't it? A. Yes, sir.

MR. SCHLICK: That is all on that particular point, Your Honor.

THE COURT: Do you have any further testimony you want me to hear on that point?

MR. SCHLICK: On that particular point only, Your Honor?

THE COURT: Yes.

MR. SCHLICK: Yes, on that one particular issue.

THE COURT: Yes.

You may step down.

(Witness temporarily excused.)

Whereupon --

LEROY LEON SPRIGGS

was called as a witness and, having been first duly sworn, was examined and testified as follows out of the presence of the jury:

65

DIRECT EXAMINATION

BY MR. SCHLICK:

Q. Will you state your full name. A. My name is Leroy Leon Spriggs.

Q. And your address, Mr. Spriggs? A. 5806 Blaine Street.

Q. Are you employed? A. Yes, sir.

Q. Where are you employed? A. L. P. Steuart Car Wash.

Q. I direct your attention to the night of July 22, 1962, at the time you were arrested on Eastern Avenue, on or near Eastern Avenue and taken to the Precinct, 14th Street Precinct. Now, who actually made the arrest, which police officers, what jurisdiction? A. I was arrested between seven-thirty and eight o'clock. I was coming from my mother's house. I seen all this commotion out there, I stop in my aunt's house, in the yard, she was in the yard, and about three or four Fairmont Heights police came up. I know one, one name Warren; I don't know the other two. Came out, took their pistols out and said: Run. Said some other things.

66 Took me to the wagon. I stood on the street about five or ten minutes. Prince Georges police was there. They was undecided who should arrest me. Prince Georges said: We will take him. Fourteenth said: No, we will take him. Said: More in the District than it is in Maryland. So they took me down to 14th.

Q. Now, after you got to the 14th Precinct, how long was it before any officers talked to you? A. They put me back in the cell; asked could I make a phone call; told me, say: You are not going to make a phone call until you get ready to talk.

I said: Talk about what?

They said: Shooting Shaw.

I said: I haven't shot Shaw.

So they leave me back there until about two-thirty or three o'clock; took me upstairs. This detective came from Seat Pleasant Police Station and told me; said: You don't have to tell us anything. Said: We got a man can testify that you actually shot Shaw.

I said: Who?

They said: Washington. His name is Joseph Washington.

I said: Will you take me to Seat Pleasant Police Station and have Washington tell me in front of my face that I shot Richard Shaw?

67 He said: No, we don't have to do that. He said: We already have a statement. That is what the detective said.

Q. What did you say to the detective? A. I didn't say anything.

Q. Did you ever made an admission to the detective? A. No, sir, only thing I said is this. He said: Washington said that you shot him. I said: If Washington said I shot him, well I shot him. That is the only thing I said.

MR. SCHLICK: I think that clears the point on that, Your Honor.

THE COURT: Do you want to cross-examine, Miss Lindemann?

MISS LINDEMANN: No, Your Honor.

THE COURT: Very well.

Do either of you have anything more on this point?

MR. SCHLICK: Your Honor, I believe it is the law in this jurisdiction --

MISS LINDEMANN: Is Your Honor speaking about evidence or argument on the law?

THE COURT: Evidence.

MISS LINDEMANN: If Your Honor please, I am also going to have Detective Bell. Does Your Honor think it would save time to hear Detective Bell at this time and rule on both?

68 THE COURT: I think so.

Whereupon --

ALTON M. BELL

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows out of the presence of the jury:

MISS LINDEMANN: With Your Honor's permission, may I lead the witness through the preliminaries?

THE COURT: Very well.

DIRECT EXAMINATION

BY MISS LINDEMANN:

Q. What is your name? A. Detective Alton M. Bell, assigned to the 14th Precinct.

Q. Were you so assigned on July 22, 1962? A. Yes, ma'am, I was.

Q. Did you have occasion on that night to go to the Prince Georges Hospital? A. Yes, ma'am.

Q. And thereafter, did you have a telephone conversation with the 14th Precinct? A. Yes, ma'am.

Q. As a result of that, did you learn that the Defendant Spriggs was at the 14th Precinct? A. Yes, ma'am.

69 Q. Did you return to the 14th? A. Yes, ma'am.

Q. Did you have a conversation with Spriggs? A. Yes, ma'am.

Q. Now, at approximately what time was that? A. It was approximately ten p.m. or very close thereabouts. I had been at the County Hospital approximately nine-thirty-five to nine-fifty, and that is about just when I left the County Hospital. It only takes about ten minutes to drive to Number 14 from the County Hospital.

Q. To your knowledge, was Officer Bailey -- had Officer Bailey already had a conversation with the Defendant? A. Yes, ma'am. He was already making the line-up sheet and the statement of facts when I arrived back at the 14th.

Q. Did you see him having filled those out? A. Yes, ma'am, he was working on them when I got there.

Q. Did he report to you the nature of his conversation with the Defendant? A. Yes, ma'am, he did.

MR. SCHLICK: Objection, Your Honor, that is all hearsay.

THE COURT: The objection is overruled.

70 BY MISS LINDEMANN:

Q. Without telling us the nature of the conversation, did you then --

MISS LINDEMANN: Your Honor, I am not going into this for the truth of what he said but rather to corroborate the fact that he did have this statement.

THE COURT: I understand. I am particularly interested with respect to the time the statement was made.

MISS LINDEMANN: Yes.

BY MISS LINDEMANN:

Q. Did he tell you the time at which he had had this conversation with the Defendant? A. Well --

THE COURT: Let me get at it this way. As I understand it, you got back to the Precinct about ten o'clock or shortly after ten?

THE WITNESS: Yes, Your Honor.

THE COURT: That is the evening of the occurrence, is that right?

THE WITNESS: Yes, Your Honor.

THE COURT: At that time, Officer Bailey had already made out some reports?

THE WITNESS: Yes, Your Honor. He was in the process of making the statement of facts and the line-up sheet when I arrived. And at
71 this time, Officer Bailey told me that the Defendant had admitted to him what had transpired; and while I was there and in my presence, the Defendant made the same admission again.

THE COURT: When Officer Bailey told you that the Defendant admitted it, was the Defendant there at that time?

THE WITNESS: Yes, sir, he was.

THE COURT: He heard that conversation between Bailey and yourself?

THE WITNESS: Yes, sir, he was.

THE COURT: And then what happened?

THE WITNESS: At this time, Officer Bailey finished making the line-up sheet and the statement of facts, and he was -- I think, if I am not mistaken, he had already been placed on the book prior to the statement of facts and the line-up sheet being made; and then after the line-up sheet and statement of facts were made, he was taken back downstairs and placed in the cellblock to be taken to Court the next morning.

THE COURT: When did the Defendant tell you he had shot the man?

THE WITNESS: Well, it was very shortly after I arrived there. I asked Bailey if he had made any statements as to whether he had done it or not, and Bailey told me, yes, he had already said that he is the one that

72 committed this offense. And I even asked Leroy myself, I said:
Why did you do it?

And he said: Well, we had a fight. And he went and got a shotgun
and shot him.

THE COURT: Do you want anything more?

MISS LINDEMANN: No, Your Honor.

THE COURT: Mr. Schlick.

CROSS EXAMINATION

BY MR. SCHLICK:

Q. Most of this information, Officer Bell, you got from Officer
Bailey, is that right? A. Sir?

Q. Most of the information or the admissions that you say you
heard, actually were heard from Officer Bailey, weren't they? Didn't
Officer Bailey tell you what Leroy said? A. Yes, he had told me what
Leroy had told him, and then I, in turn, asked Leroy myself, and then Le-
roy made the statement to me that he had shot the complainant in this
case.

MR. SCHLICK: I have no more questions, Your Honor.

THE COURT: Very well. Thank you, officer.

* * * * *

75 THE COURT: I am of the same opinion. I am of the opinion these
were threshold confessions not barred by Mallory and that they are ad-
missible. I will overrule the objection.

* * * * *

(Whereupon Court reconvened and the following proceedings
were held in the presence of the jury:)

Whereupon --

LOWELL E. BAILEY

resumed the stand and testified further as follows:

76 DIRECT EXAMINATION (Cont'd)

BY MISS LINDEMANN:

Q. Officer, in the normal police procedure, when booking an ar-
rested defendant, will you tell us how many form of papers have to be

made out? A. We have to make a statement of facts for Court, a line-up sheet, at that time an investigation sheet, and the report that goes on the CCR book at the precinct -- four forms.

THE COURT: What does CCR mean?

THE WITNESS: It is a ledger book that we have at the precinct. CCR stands for Central Communications and Records.

THE COURT: That answers my question.

BY MISS LINDEMANN:

Q. During the course of making out those four forms, did you have a conversation with the Defendant? A. Yes, I did.

* * * * *

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CROSS EXAMINATION

BY MR. SCHLICK:

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Q. All right. Now, officer, going back to the time of the arrest, did you see the Defendant with a gun? Did he have a gun? A. No, I didn't.

Q. Was the gun ever found and who found it? A. The gun was brought into the Precinct the next morning, I understand by one of the people who --

MISS LINDEMANN: I object, Your Honor, on the ground that this calls for hearsay testimony.

THE COURT: Yes. You don't know about it yourself, do you?

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THE WITNESS: No, sir.

THE COURT: Objection sustained.

BY MR. SCHLICK:

* * * * *

Q. How long was it before you started and had a conversation with the Defendant? A. Almost immediately when I returned to the Precinct station house.

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ALTON M. BELL

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

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CROSS EXAMINATION

BY MR. SCHLICK:

* * * * *

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Q. Do you know of your own knowledge where or when the gun was found? A. Where or when?

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Q. When the gun that was used in this shooting was found? A. No, sir, I do not.

Q. You do not.

MR. SCHLICK: I have no more questions, Your Honor, at this point.

* * * * *

93

CLIFTON SPEASE

was called as a witness for the Defendant and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SCHLICK:

* * * * *

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Q. Did you hear him say anything -- without telling me -- did you hear him say anything to Shaw? A. Yes, sir. I heard him ask Shaw,

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say: Who shot you? That is what he asked him. And then he didn't say anything. So he repeated over and over; and then he say: Did Spriggs shoot you?

And he said: Yes, Gummy shot me.

* * * * *

MR. SCHLICK: Will you recall Officer Hall, please.

Whereupon,

JOSEPH HALL

was called as a witness by the Defendant and, having been previously

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duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * * *

104 THE COURT: May I speak to counsel for a moment?

(Whereupon counsel approached the bench and the following proceedings were held:)

THE COURT: I don't think there ought to be any mystery about the situation that is out there. Can't you agree on what the design of the house is? Is it significant?

MISS LINDEMANN: No.

THE COURT: Is it of great importance?

105 MR. SCHLICK: I think it is, because I have made a diagram of the house when I went out and took some pictures of the area, and the officer can't be right, because the telephone is up just inside the dining room, and she had to go way around into the lower level. There are two levels in that house.

THE COURT: You can't agree on what is there?

MISS LINDEMANN: I have never been there, Your Honor. I can only take the testimony of the officer who examined the premises.

MR. SCHLICK: I wonder if we could recall in any way Mrs. Cooper? She would certainly know what her house is like.

THE COURT: She is gone.

MISS LINDEMANN: She has been finally excused, if Your Honor please.

THE COURT: I don't think so. Let's go ahead with the trial.

* * * * *

LEROY LEON SPRIGGS

was called as a witness in his own behalf and, having been first duly sworn, was examined and testified as follows:

106 DIRECT EXAMINATION

BY MR. SCHLICK:

Q. Mr. Spriggs, will you state your full name? A. My name is Leroy Leon Spriggs.

Q. And your address? A. 5806 Blaine Street.

Q. Are you employed? A. Yes, I am.

Q. Where are you employed? A. L. P. Steuart Car Wash.

Q. I direct your attention to the night of or the evening of July 22, 1962, and ask if you remember what transpired about six o'clock, from six o'clock on? A. Yes, I can.

Q. Can you tell us, please? A. It was on a Sunday, July 22. We always go up on a place called the hill, which is --

THE COURT: The question is, what transpired that night. Don't go into any other details.

THE WITNESS: Oh. Spease went to the beer garden --

THE COURT: Who did?

THE WITNESS: Spease. He goes into Hall's and come out holding his face. I was standing on the lot, so I asked him what happened. He said T had hit him with a bottle. I noticed T coming out behind him.

107 Q. Identify T for us. A. His name is Richard Shaw.

Q. You call him T? A. Uh-huh. I notice he come out behind him. So I said: Ain't no use in fighting. I went over to try to talk to T. He asked me, he said: You want some of this, too?

I said: Some of what?

And next thing I know, he said: Well, I am going to give you some, too, because I don't like you anyway.

I started back, I was backing up; he had his hand in his pocket. When I turned around, he cut my clothes right there -- I have them in a bag.

So I ran across on the lot, where Spease was. I started throwing bottles.

Then Buddy Washington came up, the fight continued to the end of the laundromatt.

Q. Where is the laundromatt? A. That is on the corner of 61st Avenue.

Q. I see. Sixty-First Avenue? A. Uh-huh.

Q. On the corner (indicating). All right. A. Then Buddy Washington came and pulled up this sign which was No Parking sign, and dropped it on him. Then he got on top, started beating, beating.

A whole crowd of people started coming around saying, telling other people, saying: He ain't no good no way. Say: Kill him. Just like that.

So this boy, Herman Burr, and Hiawatha picks T up off the ground, and take him towards Eastern Avenue, where he was living.

This boy named Rudolf Brown and Buddy Washington ran through the alley. So I rant out on Eastern Avenue, too. I going to see what else going to happen.

Next thing I know, boy came out with the gun. Buddy Washington start the gun; next thing I know, T was laying on the ground.

I came back up on the hill looking for him. Someone had said he had gone to the hospital.

That was all to it. I don't have no reason to shoot him, you know, or anything.

Like the people have said here today, said, I shot him, or I meant to shoot him. I don't have any reason. He did a lot of things to me, you know, but I don't have no malice against him. I mean, he have cut me two or three times, you know, and different things like that.

109 If the officer would have told you -- know that he have a pretty bad record for cutting me.

Q. After T Shaw got shot, then what happened? A. I was on my way up, coming back up Eastern Avenue and I stopped there at my aunt's house.

Q. Where is your aunt's house located? A. On those pictures right there, front of Miss Calpernia's house.

Q. Over here (indicating)? A. Yes, sir, across the street, right in front of the lady's house that was witness here yesterday.

Q. All right. Then what happened? A. So I was standing there, three Fairmont Heights police arrested me and they pulled their guns out. Told me, said: You can run now.

Q. Where was this? A. I was standing in my aunt's yard when they arrested me.

Q. You say they pulled the guns out? A. Yes, sir.

Q. What did they do? A. And marched me across to Eastern Avenue where the patrol wagon was stationed, and Prince George County police was there and Fairmont Heights police was there and District police was there. So they had a little discussion about who was going to lock me up.

110 I said: Lock me up for what?

They said: We just got the news that you shoot somebody. Where is the gun?

I said: I shot nobody; never owned one; don't know how to shoot one.

They said: We have information that you shot T.

I said: If you have that kind of information, what you all going to do, lock me up?

Said: Yes, we are going to lock you up, going to book you for it.

Took me to 14th Precinct.

Q. Then what happened? A. Took me in the back. I'd say about two-thirty or something to three, that is when they come back, carried me upstairs and questioned me. This detective, he stated that he had been to Seat Pleasant police station to see Buddy Washington, and that Buddy had signed a written confession that I was the man that shot Richard T. Shaw. And at the time it was four people in the street when he fired the gun.

Q. When this Richard T. Shaw was going up Eastern Avenue with his two friends -- A. He was going down Eastern Avenue.

Q. Down? A. Toward 59th.

111 Q. Did you notice his condition? A. I mean, during the course of a day, we had been drinking. Prior to, before the fight took place, we had been drinking just about all day. We started from H&H and wind -- after we got through playing crap, he won the money, he went over there and said: I am going to buy some beer. You all can't drink no beer today.

So he broke us on the lot playing crap.

Q. Was he pretty badly beaten up at that point? You say he was beaten? A. Yes. He was laying in the middle of the street by the laundrymatt. I mean, a lot of people gather around.

Q. Yes. A. You know.

Q. Do you recall if anybody called the police when you were fighting at this point? A. Well, no. The police didn't come until after -- they said that I shot somebody. That is when all the police came. They didn't come during the time that the fight occurred.

Q. And you didn't have a gun when they arrested you? A. No, sir, I don't own no gun.

Q. You were up at this point when they arrested you, or up in here (indicating)? A. I was 59th and Field Place. The back of my aunt's
112 sets on 59th Place, 59th and Field Place.

Q. Right in here (indicating)? A. Right across in front of 60th Avenue.

Q. I see. Do you recognize this gun? A. No, sir, I never -- I never seen that before.

Q. Never saw it? A. No, sir.

Q. Do you recognize the initials, A. C.? A. No, sir.

Q. You say you never saw that gun before? A. Never saw -- I don't know nobody with the A. C. in the name.

Q. Now, while you were in the Precinct, did Officer Bailey come and talk to you? A. He came downstairs and got me and carried me upstairs. During the time that he was coming down to get me, detective was just coming through the door, the one that you just dismissed. He was just coming through the door.

So they asked him had he talked to me. Said: Yes, he talked to me. Said I didn't want to cooperate with him.

I said: Why should I cooperate with you when I didn't do anything.

113 Q. Then what did he say? A. So he stated -- the detective -- the other police, he didn't say anything else. He just sit there listening. He was just listening. And the detective stated that he had been to Prince Georges Hospital; he also had been to police station, and they had a sweat-shirt was full of blood, which they say belongs to me. And come to find out it belongs to Buddy Washington.

He say: I know it is your shirt.

Buddy Washington shirt. I just want to see if you own it. The same clothes, identical clothes that I had on during the time that the fight took place, they are over there in the bag.

MR. SCHLICK: I offer this as Exhibit 2, for identification.

THE CLERK: Defendant's Exhibits Nos. 2 and 3 marked for identification.

(Whereupon the trousers were marked Defendant's Exhibit No. 2, for identification.)

(Whereupon the shirt was marked Defendant's Exhibit No. 3, for identification.)

BY MR. SCHLICK:

114 Q. Are these the clothes? A. Those are the clothes. That is where he cut me in the back, back of the pants.

Q. Where did he cut you? A. Right here (indicating). I was pulling away from him, right here (indicating).

Q. Did he cut you any other place? A. No, he just tore the shirt.

Q. Oh, he tore that.

You say there was a sweat shirt with blood on it? A. Yes, the police had a sweat shirt with some blood.

Q. Was that yours? A. No. I never wear a sweat shirt.

Q. Now, what else did Officer Bailey say, if anything? A. Only thing he said at the time that he had talked to Buddy Washington and Buddy said that he didn't do it; say I was the one; say he was in the street but I was the one that commit the crime.

Q. At the time the fight started, there was no gun around, was there? A. No, wasn't anything about fighting.

Q. Where did that gun come from, do you have any idea? A. Well, no, I don't.

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115

CROSS EXAMINATION

BY MISS LINDEMANN:

* * * * *

118 Q. Now, there came a time when the disturbance outside of Hall's ended, is that correct? A. Yes, it -- it didn't what you call ended.

Q. It ended, it stopped? A. No, they kept fighting.

Q. Did there come a time when the fight outside of Hall's stopped?
A. Yes, it ended when Hiawatha and Herman Burr taken him towards his home on Eastern Avenue.

Q. There came a time when the fight stopped? A. That is when it stopped.

Q. And Thorne was taking Shaw towards his home down Eastern Avenue? A. Yes.

Q. Is that right? A. Yes.

Q. The fight was over? A. Yes.

Q. There was no gun present at that time? A. No.

119 Q. Is that your testimony? A. Yes.

Q. That is right. This gun here, Government's Exhibit 2 -- this gun wasn't outside of Hall's at that time, was it? A. The gun?

Q. This gun. A. I never saw it before until today.

Q. You never saw it outside of Hall's then? A. No.

Q. And Shaw was injured at that time, wasn't he? A. Yes.

Q. He was being aided, he was being held under the arm going down Eastern Avenue towards his home, wasn't he? A. Yes, he was.

Q. And he had his back towards the place where you all were standing, didn't he? A. Yes.

Q. And then you testified that somebody said: He ain't no good anyway, we will kill him. A. Yes, that is what the crowd said, yes.

Q. That is right. And then the next thing you know about it is that he was lying face down shot in the back, is that correct? A. That is correct.

120 Q. And Buddy Washington said that he was the one who shot him, is that correct? A. No, he didn't -- he shot him, but he didn't own up

to it. He said I shot it. Said I was the man. In order to keep himself out of it, he said I was. The police accepted that.

Q. Did you see Buddy Washington shoot him? A. Yes, I saw him shoot him.

Q. Then you walked down Eastern Avenue, is that right? A. Did I walk down?

Q. Yes. A. We was standing down in Eastern Avenue. Buddy was up in the woods, and I went to get my niece.

Q. You were down on Eastern Avenue when Buddy shot him? A. I was down there. Quite a few people, three or four other people was down there.

Q. Where is Buddy Washington today? A. The last time I heard from him, he was in Jessups.

Q. Do you remember Mrs. Cooper testifying here? A. Ma'am?

Q. Do you remember Mrs. Cooper testifying here? A. Yes, yes.

121 Q. Do you remember Mrs. Cooper testifying on the stand that she looked out of her window? A. Yes.

Q. And she saw you, she saw three-quarters of your face, and she saw you standing there pointing this gun down Eastern Avenue?

Do you remember that? A. Yes, I remember that.

Q. Is that true? A. No, it is not true.

Q. She was incorrect, then, when she made that testimony?

A. She definitely was wrong.

Q. Did you hear the victim Shaw testify here? A. Yes.

Q. Did you hear him testify that he looked around over his shoulder?

A. Yes.

Q. And he saw you standing there pointing the gun at him down Eastern Avenue? A. Yes.

Q. Was he incorrect in that testimony? A. He was incorrect, too, for the simple reason -- could I explain why he was incorrect?

122 Q. Did you hear Captain Hall testify here? A. Yes.

Q. Did you hear him testify that he rushed to the man lying in the gutter on Eastern Avenue, and he turned his face aside --

MR. SCHLICK: Objection. I don't believe his testimony was that at all. Didn't talk to him until he was in the ambulance.

THE COURT: The Court is not clear about the testimony on that score.

You may proceed, Miss Lindemann.

BY MISS LINDEMANN:

Q. Now, sir, if you don't recollect the testimony -- you tell me that that is not the way you recollect it. All right.

Now, do you recollect Captain Hall testifying in this courtroom?

A. I understood --

Q. Do you recollect Captain Hall testifying? A. Yes, I do.

Q. Do you recollect him testifying that he saw Shaw lying with his face down on the ground of Eastern Avenue? A. Yes.

123 Q. Do you recall him testifying that he turned his face to the side and Shaw said something to him? A. No, I can't recall that. Only time I recall it is when he say he was in the ambulance.

Q. Do you recall Captain Hall testifying that Shaw said that you shot him? A. Yes.

Q. Was that correct? A. That is -- he is wrong about what T said. T was wrong.

Q. Captain Hall was wrong? A. He wasn't wrong, because the man told him that I shot him. He wasn't wrong about testifying about what somebody told him. He wasn't wrong for that. How else can he testify? He know I didn't do it. The man said I did.

Q. Do you recall Officer Bailey testifying in this case? A. Yes.

Q. Do you recall Officer Bailey testifying that you admitted to him that you shot Shaw? A. Yes, I recall him saying that.

Q. Did you say that to -- A. I say, I recall him saying that. I didn't say anything.

124 Q. Now, when you were in the station that night, did you tell that to Officer Bailey? Did you tell Officer Bailey -- A. That I shot T? No, I didn't.

Q. Then Officer Bailey was mistaken when he testified here?

A. Yes, he was; yes, he was.

Q. Do you recall Detective Ball testifying here?

THE COURT: Detective who?

MISS LINDEMANN: Ball, Your Honor. Bell, excuse me, Your Honor.

BY MISS LINDEMANN:

Q. Do you recall Detective Bell testifying here? A. Yes.

Q. Do you recall Detective Bell testifying that you told him that you shot Shaw? A. Yes, I recall that, too.

Q. Did you tell Detective Bell that you shot Shaw? A. I didn't tell him anything.

Q. Then Detective Bell was also mistaken in his testimony?

A. That is correct.

If it please the Court, Mr. Judge, could I say something.

THE COURT: You have answered the question.

125 MISS LINDEMANN: I have no question pending at this time, Your Honor.

THE COURT: Do you have any further questions?

BY MISS LINDEMANN:

Q. You don't know where Buddy Washington is today? A. I -- just like I said before, the last time I heard from Buddy Washington was last year, he was in Jessups. Where he at now, I do not know. I mean, the officers was supposed to have been looking for him to bring him into court, you understand. He put the stuff on me. He run and was out in the street.

MISS LINDEMANN: I have no further questions, Your Honor.

[REDIRECT EXAMINATION]

BY MR. SCHLICK:

Q. You say that Buddy Washington was where? A. The last time I heard, he was in Jessups.

Q. What is that? A. That is a house of correction.

Q. Maryland House of Correction? A. Yes, sir.

Q. Going back to the conversation that you and Officer Bailey had at the 14th Precinct on the night of the 22nd, could you go over your testimony exactly what Officer Bailey said to you and what you said to
126 Officer Bailey? A. Yes, I can.

Q. Will you do that, please? A. He came in and got me out from out of the lock-up. I'd say somewhere around between two-thirty or something to three. That was in the morning.

MISS LINDEMANN: I think this is what the witness already testified to.

THE COURT: Yes, I will sustain the objection if you are merely repeating what he has already said.

MR. SCHLICK: No, I want to bring out some additional what he said to Officer Bailey when Officer Bailey --

BY MR. SCHLICK:

Q. Did Officer Bailey keep --

THE COURT: No, no.

THE WITNESS: Yes, he kept pressing me about what somebody say. Say we got three or four witness can prove.

I say: Well, let them. I say: You tell me about that. I supposed to have a half-way decent right. I say: Take me to those people, take me to the lady's house, let her identify me.

BY MR. SCHLICK:

Q. Did you ever made an admission to Officer Bailey? A. I
127 didn't make -- only admission I made was for him to take me to Seat Pleasant or lady's house to get me to prove in front of my face that I was not the man that shot that man Richard Shaw.

Q. Did you say anything to Officer Bell, like after he -- A. No, I didn't. Only thing I said to him was this. He said: I just come from Seat Pleasant and they have locked Buddy Washington up.

I said: So they locked him up.

He said that he signed a statement and will come to Court and say that you was the man that shot him.

I said: Well, take me to him.

So he said: We don't have to take you.

THE COURT: You have answered the question.

MR. SCHLICK: That is all, Your Honor.

THE COURT: Do you have anything further, Miss Lindemann?

MISS LINDEMANN: No, Your Honor.

THE COURT: He may step down.

* * * * *

[Filed May 1, 1963]

[VERDICT OF THE JURY]

On this 1st day of May, 1963, came again the parties aforesaid; in manner as aforesaid; and the same jury as aforesaid in this cause, the hearing of which was respited yesterday; whereupon, after having heard further of the evidence and the instructions of the Court, the two alternate jurors are excused from further service in this case; and thereupon the jury retires to consider their verdict.

The jury returns into Court and upon their oath say that the defendant is guilty as charged.

The case is referred to the Probation Officer of the Court and the defendant is committed to the District of Columbia Jail. Commitment issued.

By direction of

JOSEPH C. McGARRAGHY
Presiding Judge
Criminal Court # FOUR

Present:

HARRY M. HULL, Clerk

United States Attorney

By Barbara Lindemann
Assistant United States
Attorney
Elaine Wells, Ida Watson
Official Reporters

By /s/ Alan C. Campbell
Deputy Clerk

[Filed June 21, 1963]

JUDGMENT AND COMMITMENT

On this 20th day of June, 1963, came the attorney for the government and the defendant appeared in person and by counsel, John J. Schlick, Esquire.

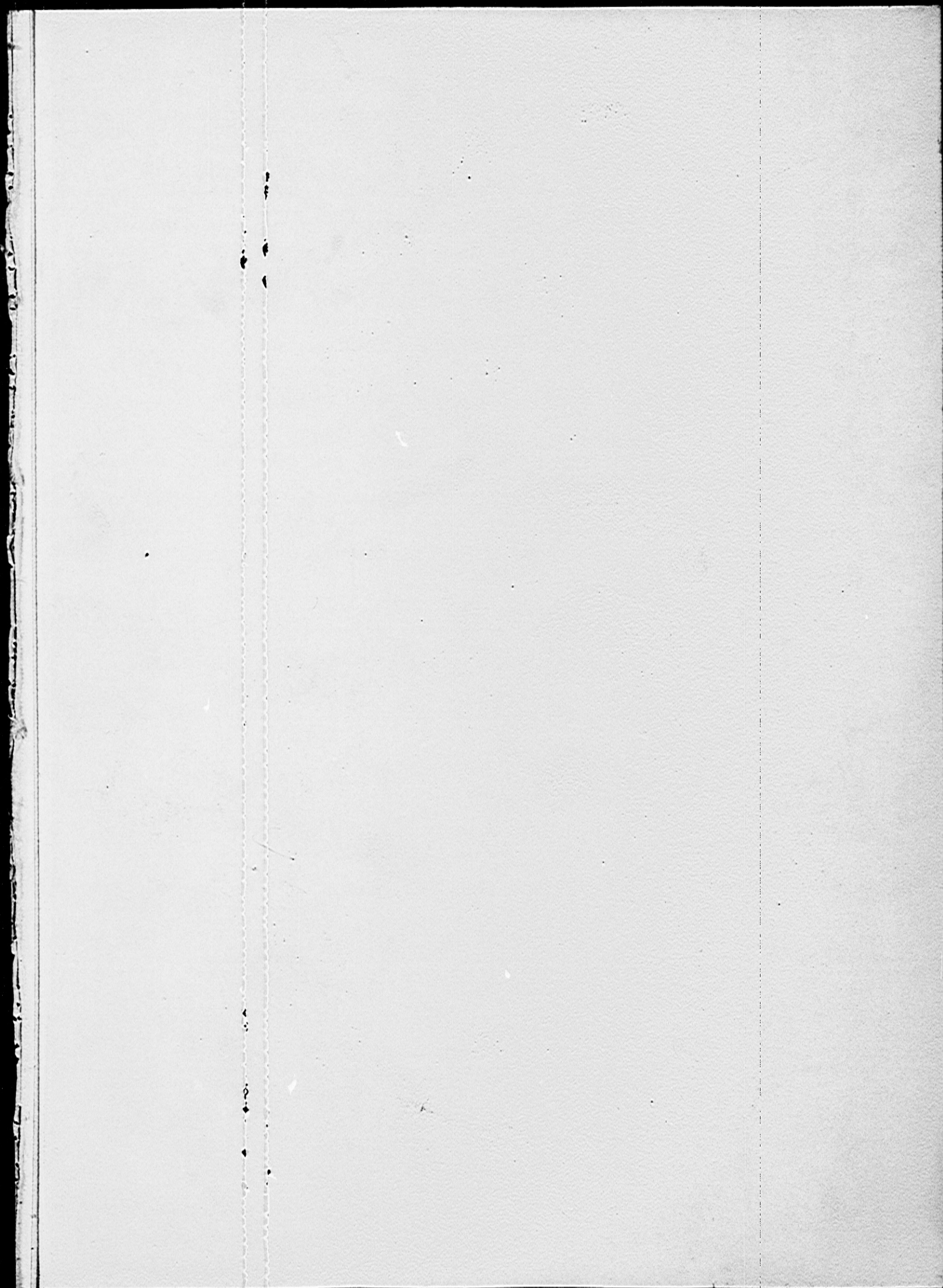
IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of Assault with Dangerous Weapon as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Three (3) years to Nine (9) years.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Joseph C. McGarraghy
United States District Judge



BRIEF FOR APPELLEE

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17962

LEROY L. SPRIGGS, APPELLANT,

v.

UNITED STATES OF AMERICA, APPELLEE.

**Appeal from the United States District Court
for the District of Columbia**

United States Court of Appeals
for the District of Columbia Circuit

FILED NOV 29 1963

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,
BARBARA A. LINDEMANN,
JOHN A. TERRY,

Assistant United States Attorneys.

Nathan J. Paulson
CLERK

QUESTIONS PRESENTED

1. In a trial for assault with a dangerous weapon, did the trial court commit error in allowing a shotgun to be admitted into evidence when:

- (a) the weapon named in the indictment was a shotgun, and there was undisputed evidence that the victim had been critically injured by a shotgun;
- (b) there was abundant evidence of the defendant's guilt, including two separate admissions which he made to two different police officers shortly after his arrest;
- (c) an eyewitness testified that the shotgun admitted into evidence resembled the one which she saw in the hands of the defendant at the time and place of the shooting; and
- (d) defense counsel expressly stated that he had no objection to the admission of the shotgun into evidence?

2. If it was error, was it of such magnitude as to constitute "plain error" within the meaning of Rule 52(b), Federal Rules of Criminal Procedure?

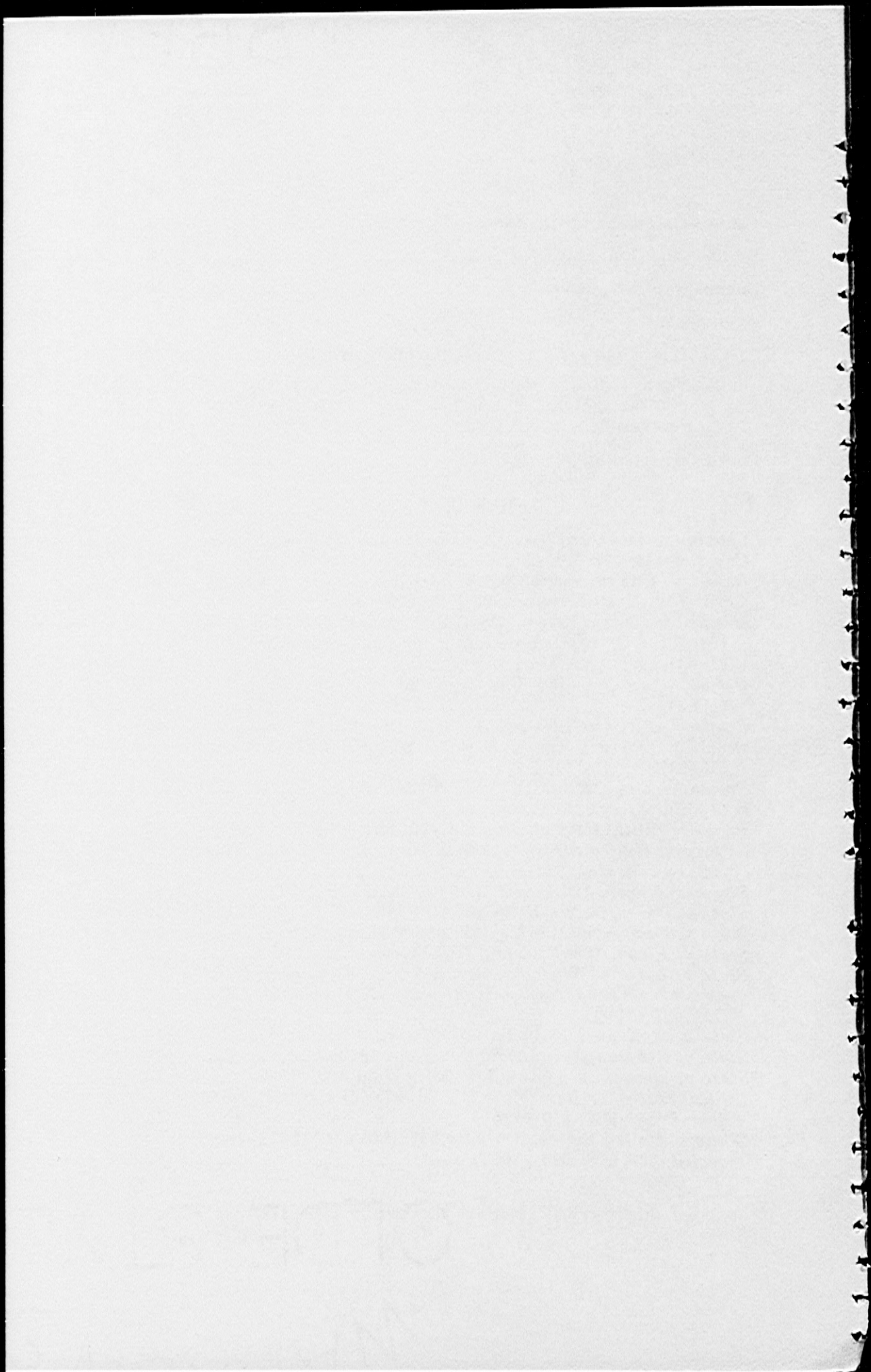
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* Cases chiefly relied upon are marked by asterisks.



United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17962

LEROY L. SPRIGGS, APPELLANT,

v.

UNITED STATES OF AMERICA, APPELLEE.

**Appeal from the United States District Court
for the District of Columbia**

COUNTERSTATEMENT OF THE CASE

In an indictment filed on September 17, 1962 (J.A. 1), Leroy L. Spriggs was charged with assault with a dangerous weapon, *viz.*, a shotgun, in violation of 22 D.C. Code § 502. He was tried by a jury before Judge McGarraghy of the District Court on April 30 and May 1, 1963. The jury found him guilty, and by judgment and commitment filed June 21, 1963 (J.A. 48), he was sentenced to be imprisoned for a term of three to nine years. From that judgment he appeals.

The Shooting

On Sunday evening, July 22, 1962, Richard T. Shaw was shot in the back with a shotgun. According to his testimony at the trial, Shaw and a friend, Hiawatha Thorne, went into a restaurant or tavern in Fairmont

Heights, Maryland, just a few steps across the District Line in Prince Georges County. As soon as they got inside they encountered Clifton Spease,¹ who had had a fight with Shaw a couple of months earlier (J.A. 4). Spease immediately threatened to jump on Shaw and beat him up, and Shaw then grabbed a bottle and threw it at Spease. Spease left the restaurant. When Shaw went outside a few minutes later, he saw Spease coming toward him with a long metal pipe in his hand, "something like a gas pipe" (J.A. 4), and another man named Buddy Washington was approaching from across the street. Shaw reached down and picked up a bottle and broke it, and, as he testified, "when he charged at me with the pipe, I charged at him with the bottle" (J.A. 5). The fight immediately attracted other combatants. Buddy Washington pulled a No Parking sign out of the ground and struck Shaw on the arm with it. Appellant, who it later developed (J.A. 37, 39; see J.A. 8) had been shooting craps on a vacant lot nearby, joined in the fray, jumped on Shaw and started beating and kicking him along with the others (J.A. 5). An unidentified girl managed to break up the fight, and Shaw and Hiawatha Thorne walked away toward Eastern Avenue, which is the dividing line between Maryland and the District of Columbia. About a block and a half down Eastern Avenue, in the District of Columbia, Thorne said to Shaw, "They's behind you with a shotgun" (J.A. 5). Shaw looked around over his shoulder and saw Leroy Spriggs, Buddy Washington, and Clifton Spease behind him. Shaw testified:

Leroy was standing in the middle between the two—between Speaks [Spease] and Buddy Washington, with his shotgun.

I looked over my shoulder like this [indicating], and I saw him. And Thorne say: Look like they fixing to shoot you.

So I said: Well, maybe they won't shoot me. Just like that. I was standing there looking at them, just

¹ Sometimes spelled "Speaks" in the transcript.

like that, right across my shoulder; and the gun went off; and I fell right on the curb, right across the curb. (J.A. 6).

While Shaw was lying on the ground, gravely wounded, a number of people came up and asked him who had shot him. He told everyone it was Leroy Spriggs (J.A. 6). He gave the same information to a Fairmont Heights police officer who questioned him in the ambulance (Tr. 44), and at the hospital he told a detective from the Metropolitan Police that Spriggs had shot him (Tr. 86). Shaw was in critical condition for more than a week and remained in the hospital almost a month.

The Eyewitnesses

In addition to Shaw himself, who saw appellant fire the shotgun at him, the Government had two other eyewitnesses to the shooting. Mrs. Calpernia Cooper testified that on Sunday evening, July 22, she was seated in her dining room near the window about to make a telephone call. As she was dialing she happened to glance out the window. "I saw a fellow by the name of Leroy Spriggs had a shotgun aiming it at someone," she testified, "and I said to myself: I wonder who he shooting at" (J.A. 14). From where she was sitting Mrs. Cooper could not see what was in the line of fire, so she got up and went to another window which had an unobstructed view of the street. While she was en route she heard the gun go off, and when she reached the other window and looked outside, she saw Richard Shaw lying on the ground.²

Q. When you went to your other window, Mrs. Cooper . . . and saw the person lying on the ground, can you tell us if that person—if you know—if that body was lying in the place that the defendant was pointing the gun at?

² On cross-examination Mrs. Cooper observed, "I thought he was shooting at the birds . . . but when I went to see and saw the fellow lying on the ground, I knew different" (J.A. 18).

A. Well, I would say, yes, for the simple reason, when I saw him pointing the gun at the position that he had the shotgun aimed, and when I went to my window to look and saw the fellow lying on the ground, I would say that was the direction that he was pointing at. (J.A. 17)

She immediately ran to the phone and called for help (J.A. 14, 19).

Mrs. Cooper was quite positive in her identification of appellant as the man with the gun and never wavered on cross-examination. The shooting occurred about eight o'clock in the evening, Daylight Saving Time. "[I]t was really light . . . just beginning to get dusk . . ." (J.A. 14-15). Mrs. Cooper got a good look at appellant. She testified both on direct examination (J.A. 15) and on cross-examination (J.A. 18) that she saw about three-fourths of his face, the rest of it being obscured by the gun. "[H]e were looking directly at me and I could see him from the way I was sitting in my dining room window" (J.A. 18). She recognized appellant immediately because she had found him asleep in her father's front yard a few weeks earlier. On that occasion she had been sweeping in front of her father's home, and appellant was seated slumbering on the lawn.

And as I was beginning to sweep, another fellow came across the street to wake him up so that I could sweep. I said: Don't bother him; he will get up. Just then he got up and he went across the street; and when he went across the street to sit down, he looked directly at me and I looked directly at him.

That is how I know he was the one that had the shotgun the night of July. (J.A. 15)

The second eyewitness subpoenaed by the Government was Hiawatha Thorne. Thorne did not testify, but the Assistant United States Attorney made a proffer of his testimony and kept him available in the witness room. His testimony, in the opinion of the Government, would

have been cumulative and repetitious, so the Government concluded its case without putting Thorne on the stand (Tr. 91-92). Defense counsel made no objection to this procedure, nor was Thorne ever called later as a witness by the defense.

The Shotgun

During her direct testimony Mrs. Cooper was asked about the position in which appellant was holding the shotgun when she saw him through her window. At that point a shotgun was brought forth and was marked as Government's Exhibit No. 2 for identification (J.A. 15-16). The following colloquy then took place:

THE DEFENDANT [who was seated at counsel table]: I never saw the gun in my life.

MR. SCHLICK [appellant's counsel]: You can put it in, Your Honor. I don't know whether it is the gun or not. *I have no objection.*

THE COURT: Proceed.

MISS LINDEMANN [Assistant United States Attorney]: Then I offer it in evidence, Your Honor, *if counsel has no objection.*

THE COURT: Very well, it will be received. (J.A. 16) (Emphasis added.)

The gun was received in evidence, and Mrs. Cooper was asked whether it resembled the one she had seen in the hands of the defendant. She answered:

A. Well, I can't say exactly that is the gun.

Q. Does it look to you like the gun, madam?

A. Yes, it does look to me like it. (J.A. 16)

Mrs. Cooper then demonstrated the position in which appellant was holding the gun when she first looked out the window and saw him. She was unfamiliar with the normal way of holding a shotgun (J.A. 18), but she did recall the specific manner in which appellant held the gun on July 22 and described it with precision.

The only further references to the gun present in the courtroom came during the testimony of appellant Spriggs. Both on direct examination (J.A. 40, 41) and on cross-examination (J.A. 42) appellant denied all knowledge of this particular gun and insisted that he had never seen it before, just as he had done when it was first produced in court. The shotgun evidently bore the initials "A.C." Appellant stated, however, that he did not know anyone with those initials (J.A. 40).

Two Metropolitan Police Officers, Private Bailey and Detective Bell, both of No. 14 Precinct, testified for the Government. On cross-examination each was asked in turn (J.A. 34, 35) whether the weapon used in the assault had ever been found. Neither officer had any first-hand knowledge on this point, and consequently, neither was in a position to offer any testimony regarding the gun. Officer Bailey started to say that the gun had been brought into the precinct the next morning, but when it became clear that he had no immediate knowledge of this, his further testimony was excluded (J.A. 34). It should be noted here that there is nothing in the record, either in the questions of appellant's counsel or in the answers of the police officers, to indicate that the gun they were discussing (*i.e.*, the one with which Shaw was shot) was the gun that was present in the courtroom.

The Admissions

Richard Shaw was shot at approximately eight o'clock in the evening (J.A. 3, 14), and appellant was arrested a few minutes later. One of the arresting officers, Private Bailey, remained behind at the scene of the shooting while appellant was transported to No. 14 Precinct in the patrol wagon (J.A. 22). Officer Bailey conducted an investigation on the scene and spoke with witnesses there, including Mrs. Cooper (J.A. 22-24) and Officer Hall of the Fairmont Heights Police (J.A. 21, Tr. 45). After a short time he left and returned to the precinct, arriving there about fifteen or twenty minutes after appellant's

arrest (J.A. 25). Almost immediately he began to have a conversation with appellant. After advising him that he did not have to make any statement and that anything he said could be used against him, Officer Bailey questioned him in an effort to elicit some background information (name and address, date of birth, employment history, and so on) in order to fill out the necessary police forms which must be prepared when anyone is arrested. In the course of this conversation Officer Bailey asked appellant if he wanted to discuss the incident on Eastern Avenue. Appellant refused to tell the officer anything. Officer Bailey continued filling out the papers and a few moments later asked appellant again if he wanted to tell what happened. Again appellant stated that he did not want to say anything (J.A. 25-26, Tr. 77). Officer Bailey continued:

And to the best of my recollection, the exact language that I used to the defendant is: The hell with it. If you don't tell me anything—if you don't want to tell me anything, you don't have to. The man you shot knows who shot him, the man that was with him [Hiawatha Thorne] knows who shot him, and I have a completely disinterested witness [Mrs. Cooper] who also knows who shot him, and she is the one who told me your name, and she told me that your nickname is Gummy. And if you don't want to tell me anything, you don't have to tell me anything. I don't need to know it.

Well, he says, all right, well, I shot the man. (J.A. 26; see Tr. 77-78, 84)

As the conversation progressed, appellant gave a few more facts. In the words of Officer Bailey:

There was more conversation filling out this form, and he stated that there had been a fight in Maryland, and that Shaw was on his way away from the scene of the fight, and that Shaw was being assisted by a man named Hiawatha Thorne, and someone got a shotgun and handed it to Spriggs and Spriggs shot Shaw with the shotgun.

Q. Did he say anything about his reasons?

A. He said that he just shot him. (J.A. 26; see Tr. 78, 80)

Appellant's admission to Officer Bailey, made within twenty or thirty minutes after his arrest, thus coincides in significant detail with Shaw's testimony at the trial more than nine months later.

But this was not appellant's only admission. Detective Bell of No. 14 Precinct went to Prince Georges County Hospital and interviewed Richard Shaw, who told him that appellant was the man who shot him. Immediately Bell called the precinct to relay this information. He learned then, however, that appellant had already been picked up, so he returned to the precinct (Tr. 87), arriving there at approximately ten o'clock (J.A. 31). He found Officer Bailey winding up his paper work. In appellant's presence Bailey told Bell of appellant's earlier admission (J.A. 32-33; see Tr. 88). Detective Bell himself then asked appellant what had happened on Eastern Avenue, and appellant again recounted the details of the fight and the subsequent shooting (J.A. 32-33, Tr. 88-89), adding that he had shot Shaw because he was "mad at him" (Tr. 89).

Appellant's Testimony

Appellant relied on the defense of mistaken identity. Testifying in his own behalf, he stated that Shaw had been the aggressor in the fight outside the tavern³ (J.A. 37). After the fight subsided, Shaw and his companions walked away in the direction of Eastern Avenue, and Buddy Washington and someone named Rudolf Brown ran down a nearby alley. Appellant ran out on Eastern

³ Clifton Spease testified to the same effect and also stated that Shaw and a companion were already in the tavern when he arrived, exactly opposite to Shaw's testimony. Spease further denied having followed Shaw and Thorne down Eastern Avenue (Tr. 94-95, 97-98).

Avenue "to see what else going to happen" (J.A. 38). Suddenly Washington reappeared with a gun and fired a shot at Richard Shaw; "next thing I know, T [Shaw] was laying on the ground." After Shaw was taken away in the ambulance, appellant walked back up Eastern Avenue and stopped at his aunt's house, near the home of Mrs. Cooper. He was standing in his aunt's front yard when the police arrested him (J.A. 38).

Throughout his testimony appellant steadfastly denied having shot Shaw, insisting that Buddy Washington was the guilty party (J.A. 38, 42-43). He further denied that he had made any admissions to the police (J.A. 30, 44-45) but alleged on the contrary that he had been placed in the cell block and not questioned at all by the police until 2:30 or 3:00 a.m., several hours after his arrest (J.A. 29, 39, 46). On cross-examination he disputed the testimony of Mrs. Cooper, of Shaw (J.A. 43), of Officer Bailey, and of Detective Bell (J.A. 44-45).

Buddy Washington, of course, did not appear as a witness for the defense. Appellant testified that he did not know where to find him, except that the last time he had heard from him Washington was in the Maryland House of Correction at Jessups, Maryland* (J.A. 45-46).

STATUTE INVOLVED

Title 22, § 502, District of Columbia Code, provides:

Every person convicted of an assault with intent to commit mayhem, or of an assault with a dangerous weapon, shall be sentenced to imprisonment for not more than ten years.

RULE INVOLVED

Rule 52, Federal Rules of Criminal Procedure, provides:

(a) **Harmless Error.** Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

* Of course this would not have precluded appellant from calling Washington as a witness. He could have filed a petition for a writ of habeas corpus ad testificandum. 28 U.S.C. § 2241 (c)(5).

(b) **Plain Error.** Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

SUMMARY OF ARGUMENT

The admission of the shotgun into evidence was not error. By expressly waiving objection to its admission, appellant eliminated any need for the Government to identify it any more precisely than it did. A weapon does not have to be identified with absolute certainty in order to be admissible in a criminal prosecution; a mere *prima facie* showing that it may have some connection with the crime is sufficient. The lack of positive identification goes to its weight, not its admissibility.

But even assuming *arguendo* that it may have been error, it was not "plain error" within the meaning of Rule 52(b). After two witnesses had testified that they had seen a shotgun in appellant's hands and one of them had seen him fire it, appellant was not unduly prejudiced by the physical presence of such a weapon in the courtroom. The additional prejudice, if any, was very slight. Moreover, the other evidence against appellant was so strong, and the references to the shotgun so infrequent and inconsequential throughout the trial, that it can fairly be said that the admission of the shotgun played little or no part in his conviction. Appellant has not made a sufficient showing of prejudice or unfairness so as to justify invoking the plain error doctrine.

ARGUMENT

1. It was not error to admit the shotgun into evidence

Appellant takes the position that it was error for the court to admit a shotgun into evidence when it was not positively identified as the one used in the assault. This position is untenable, however, in view of the fact that appellant made no objection below to the admission of the shotgun. Had objection been made, then appellant's con-

tention might have some substance to it, but under the circumstances here present it is without merit.

It is settled that weapons, tools, and similar instruments which appear from other evidence to have been employed in the commission of a crime are admissible into evidence, although not clearly connected with either the offense itself or the accused. A prima facie showing that the weapon or instrument may have been connected with the crime is sufficient; clear, positive identification is not necessary. *State v. Allison*, 122 Mont. 120, 199 P.2d 279 (1948); see *People v. Pittman*, 190 N.E. 2d 802 (Ill. 1963); *Cor v. State*, 192 Md. 525, 64 A.2d 732 (1949). In a recent California case a gun was introduced into evidence without being identified. There was testimony, as in the instant case, that the defendant had been seen with a pistol in his hand and that the state's exhibit "looked like" the one he was holding. On appeal the court held that the gun was admissible to illustrate the kind and appearance of the weapon used in the commission of the crime. *People v. Stone*, 213 Cal. App. 2d 281, 28 Cal. Rptr. 522 (1963). See *People v. Player*, 161 Cal. App. 2d 360, 327 P.2d 83 (1958) (victim of rape testified that knife in evidence "looks very similar to" the one used by her attacker);⁵ *State v. George*, 8 Utah 2d 172, 330 P.2d 493 (1958) (witness in robbery trial testified that gun looked "very similar . . . same type he was holding"). The lack of positive identification of a weapon so introduced goes to its weight, not its admissibility, and the weight to be given to any piece of evidence is for the jury to decide. *State v. Redding*, 357 S.W.2d 103 (Mo. 1962); *State v. Kieon*, 175 A.2d 284 (R.I. 1961); *Chavira v. State*, 167 Tex. Cr. 197, 319 S.W.2d 115 (1958); *State v. Long*, 58 Wash. 2d 830, 365 P.2d 31 (1961),

⁵ The *Player* case further holds that when a weapon is thus admitted into evidence for illustrative purposes, a party wishing the court to instruct the jury as to such limitation of purpose must affirmatively request such an instruction or be foreclosed from raising the issue later.

rev'd on other grounds sub nom. *Draper v. Washington*, 372 U.S. 487 (1963); *State v. Duree*, 52 Wash. 2d 324, 324 P.2d 1074 (1958).

In *White v. United States*, 200 F.2d 509 (5th Cir. 1952), cert. denied, 345 U.S. 999 (1953), the defendant was charged in a two-count indictment with burglarizing two post offices. A few days after the second burglary a postal inspector found some gloves and burglar tools hidden in some weeds on a railroad right-of-way about 350 yards from a trailer where the defendant lived. At the trial these items were exhibited to the jury over the defendant's objection. The appellate court held that this was proper and stated, "The jury had a right to infer that the tools were *such as could have been used* to effect the entry into the buildings." 200 F.2d at 513 (emphasis added). The connection between the tools and the defendant in *White* was far more tenuous than that between the shotgun and appellant here. In *White* there was only a possibility that the tools might have been used to break into the post offices; no one actually saw the defendant, tools in hand, jimmying the post office door. In the instant case, however, the shotgun exhibited in the courtroom resembled the one seen in appellant's hands almost at the very moment the shot was fired.

Appellant's express waiver of objection to the introduction of the shotgun eliminated the necessity of proving its identity further. It was sufficiently identified by Mrs. Cooper to be admitted into evidence, to be given whatever weight the jury chose to attach to it. It is not unreasonable to believe, however, that if appellant's counsel had objected to its admission, the Government would have then offered greater proof to connect it with the crime. If such proof had turned out to be insufficient and the court had admitted the shotgun anyhow, then appellant might have some basis for his contention here. With the record as it is, however, appellant does not have a leg to stand on.

2. Even assuming that it may have been error to admit the shotgun, it was not "plain error" requiring reversal

The heart of appellant's argument is his contention that it was not only error for the trial court to admit the shotgun into evidence as Government's Exhibit No. 2 but "plain error" within the meaning of Rule 52(b). He asserts that the mere act of producing the gun in the courtroom and displaying it before the jury was so inflammatory as to give rise to severe, irremediable prejudice and thus to deprive appellant of a fair trial. This is absurd, particularly in the light of all the other evidence against appellant apart from Government's Exhibit No. 2.

The case of *State v. Slauson*, 249 Iowa 755, 88 N.W.2d 806 (1958), is dispositive of the question of prejudice. The only prosecution witness in *Slauson* was the victim of the robbery for which the defendant was being tried. A gun was marked for identification and shown to the witness, over defendant's objection. The witness said that it looked like the gun used in the robbery but added, "I can't state that it is the gun." Defendant then objected again and moved to strike this testimony. The objection was sustained. The gun was not admitted into evidence, and the jury was admonished to disregard the testimony concerning it. Upon conviction the defendant appealed, basing his appeal on the contention that the mere display of the gun before the jury was prejudicial. In affirming the conviction the Supreme Court of Iowa pointed out that in the exercise of its discretion in admitting relevant evidence a trial court must balance the probative value of such evidence against the danger of its prejudicial effect on the jury. The court held that the trial judge was correct in excluding the gun and striking all testimony regarding it because it was "in the realm of marginal relevancy." The trial court was also right, however, in recognizing that the mere reference to the gun and its display in front of the jury was not *unduly* prejudicial. The victim of the robbery had described the

gun in general terms, as had Shaw and Mrs. Cooper in the instant case. "[T]he increased prejudice, if any, of viewing such a described gun was not so undue or extreme as to amount to a denial of a fair trial to defendant." 249 Iowa at 762, 88 N.W. 2d at 810.

The court concluded by remarking that much depends on the use of such evidence in the course of the trial and its purpose in being offered. Here the Government placed its emphasis on the testimony of the eyewitnesses and the admissions made by appellant to the police. Its use of the shotgun itself was limited and tangential. Appellant was not prejudiced. See *Mitchell v. United States*, 110 U.S. App. D.C. 322, 328, 293 F.2d 161, 167 (1961), *vacated on other grounds*, 368 U.S. 439 (1962); cf. *People v. Jordan*, 169 Cal. App. 2d 727, 337 P.2d 912 (1959) (clothing of rape victim held admissible even though prejudicial).

In *United States v. Bazzell*, 187 F.2d 878 (7th Cir.), *cert. denied*, 342 U.S. 849 (1951), a girl was kidnapped and transported across a state line to be placed in a house of prostitution. At the trial she testified that the defendant had beaten her with a blackjack, and medical testimony corroborated her story. Upon being shown a blackjack, she stated that it was of the same type as the one used on her but could not identify it any more precisely. On appeal the court held that it was within the discretion of the trial judge to admit the blackjack into evidence. "Moreover, in view of this record clearly proving Bazzell's guilt, we believe we can say with fair assurance that the admission of the blackjack had no material effect upon the verdict of the jury, hence its admission was not reversible error." 187 F.2d at 883. See *State v. McKenna*, 78 Idaho 647, 309 P.2d 206 (1957). Here, as in *Bazzell*, the record clearly proves appellant's guilt. He would surely have been convicted even if the shotgun had never been brought into the courtroom. The other evidence against appellant, including two separate admissions made to two different police officers, was so overwhelming that it can be said with fair assurance that the

admission of the shotgun had no material effect upon the verdict of the jury.

The plain error rule should be applied with caution and only to prevent a clear miscarriage of justice. A convicted defendant must make a strong showing of prejudice in order to justify its invocation. *Gendron v. United States*, 295 F.2d 897 (8th Cir. 1961). Appellant has not made such a showing here, nor could he possibly do so. Even assuming *arguendo* that it may have been error for the trial court to admit the shotgun, such error was harmless in view of all the other evidence of appellant's guilt, and reversal is not required. *Sawyer v. United States*, 112 U.S. App. D.C. 381, 303 F.2d 392, cert. denied, 371 U.S. 879 (1962); *Daniel v. United States*, 268 F.2d 849 (5th Cir. 1959); *People v. Witt*, 159 Cal. App. 2d 492, 324 P.2d 79 (1958).

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court should be affirmed.

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEEBEKER,
BARBARA A. LINDEMANN,
JOHN A. TERRY,
Assistant United States Attorneys.